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Chair

Ms. Julie Dabrusin

Standing Committee on Canadian Heritage

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● (0845)

[*Translation*]

The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)): Hello everyone and welcome to the meeting.

[*English*]

We are beginning our 109th meeting of the Standing Committee on Canadian Heritage.

Today we are beginning our study of remuneration models for artists and creative industries.

We have some witnesses with us, but before we start with them, we'll deal with another matter.

[*Translation*]

Mr. Nantel would like to say something so I will give him the floor.

Mr. Pierre Nantel (Longueuil—Saint-Hubert, NDP): Thank you, Madam Chair, for your kind invitation.

I would like to proceed to a vote on my motion. The motion is to invite representatives of the key agencies involved in the matter surrounding the famous Chagall painting, *La tour Eiffel*.

The clerk probably has the motion in hand. If you would like it to be read again, it will not take long. Then we can move on to something else.

The Chair: Do I need to read it again or is everyone already familiar with the motion?

It is the analyst who has a copy of it, so I will read it out again.

[*English*]

This is the motion that was brought by Mr. Nantel. I will read it:

> That the Committee invite the Chair of the Board of Trustees of the National Gallery of Canada, Françoise Lyon, the director of the National Gallery, Marc Mayer, the Chairperson of the Canadian Cultural Property Expert Review Board, Sharilyn J. Ingram, and the Department of Canadian Heritage, within 45 days, to explain decisions concerning Marc Chagall's *Le tour Eiffel* and Jacques-Louis David's *Saint Jerome Hears the Trumpet of the Last Judgement* and to account to the Committee for these decisions' cost to the public.

I know that we had debate on this at one of our previous meetings.

[*Translation*]

Does anyone wish to comment on this motion?

[*English*]

(Motion negatived)

The Chair: Now we can continue with our witnesses. Today we have with us from the Department of Industry, Mark Schaan and Martin Simard. From the Department of Canadian Heritage, we have Nathalie Théberge, Lara Taylor, and Ian Dahlman.

Let's begin with the Department of Canadian Heritage, please.

[*Translation*]

Ms. Nathalie Théberge (Director General, Creative Marketplace and Innovation and Deputy Director of Investments, Department of Canadian Heritage): Madam Chair, the plan was for the industry department official to give his presentation first. Would that be okay with you?

● (0850)

The Chair: That's fine.

Mr. Schaan, you have the floor.

Mr. Mark Schaan (Director General, Marketplace Framework Policy Branch, Department of Industry): Thank you, Madam Chair.

My name is Mark Schaan and I am the director general of the marketplace framework policy branch, at the Department of Industry. It is a pleasure to be here today to give you an overview of an important element of Canada's intellectual property framework: the Copyright Act. Ms. Théberge and I have prepared a brief joint presentation.

The Copyright Act is one of our four main intellectual property acts. The main purpose of the Copyright Act is to encourage innovation and creativity for the benefit of all of society. It does this by creating a bundle of rights and establishing exceptions and limitations to these rights.

The Copyright Act provides an incentive for creators to create by ensuring that they will be able to tap into opportunities for their creations in the marketplace. This in turn gives the public access to new creative works.

[*English*]

Intellectual property laws, especially copyright, are considered foundational marketplace framework laws. They provide the rules of the game for businesses and consumers. The Copyright Act is a legislative instrument of general application. Like any law of general application, it must be amended with caution, given the importance of predictability and stability for all market players. The act reflects a complex balancing of various interests and public policy objectives and is increasingly key in facilitating global commerce.

[*Translation*]

I will now go through the main elements of the Copyright Act.

Copyright protects four broad categories of original works: literary, dramatic, musical, and artistic. This includes books and magazines, audiovisual productions, music, paintings, photographs, architectural drawings, and software.

[*English*]

A fundamental principle of copyright is that copyright only protects the expression of an idea, not the idea itself. For example, an idea for a story would not be subject to copyright protection, but the expression of the idea in the form of a written story would be.

Copyright arises automatically upon creation of an original work that has been fixed in a material form. This approach was adopted internationally so that artists would not have to register their work around the world to benefit from the fruits of their creative effort.

[*Translation*]

Overall, the act gives creators the right to control or be paid for the use and dissemination of their works, but these rights have a limited term of protection. The general term of copyright protection in Canada is the author's life plus 50 years. Different term limits apply in certain cases, such as for sound recordings, which are protected for 70 years from the date of publication. Once copyright expires, the works enter the public domain and can be used without payment or consent.

In general, the act grants the copyright holder the exclusive right to reproduce, represent or communicate the work to the public. Doing any one of these things without the copyright holder's consent constitutes infringement.

In certain specific cases, the act also grants rights that are not exclusive, such as the right to remuneration for recording artists and music labels when their sound recordings are played on the radio.

[*English*]

Copyrights are not absolute and are bounded by limitations and a number of exceptions outlined in the act. For example, there's a variety of exceptions for consumers, including for format shifting, recording programs for later viewing, backup copies, and non-commercial user-generated content. There are also a number of exceptions for innovation, notably to enable activities related to reverse engineering for software interoperability, security testing, and encryption research.

[*Translation*]

Along with the economic rights that I have described, the Copyright Act also confers moral rights. Moral rights protect the integrity of works and the author's right to be associated with them or not. Unlike economic rights, moral rights cannot be assigned, but they can be waived.

The review you are taking part in is the first under the current section 92 of the Copyright Act. This provision was enacted by Parliament in 2012 as part of the last round of comprehensive reform of the act. It calls for a committee of Parliament to review the act every five years.

This provision was enacted to ensure that technology does not outpace the act and to provide a transparent forum for the interested parties to present their concerns regarding the act.

● (0855)

[*English*]

Regarding new technologies, it is important to note that there is already some degree of adaptability built into the copyright framework.

First, the courts have interpreted the act in accordance with the principle of technological neutrality, which allows copyright to evolve jurisprudentially in the absence of changes to the act. Second, copyright can be divided, licensed, or assigned by contracts. This allows parties to define and agree on various terms, conditions, and uses, thereby providing a good measure of flexibility with respect to copyright as new platforms, media, and consumer habits arise.

[*Translation*]

Canada has a modern and robust copyright framework, generally allowing for a functional marketplace. Yet, given the complexity of copyright policy and how it affects diverse economic actors, often with opposing interests, it is one of the most debated pieces of legislation and there is no shortage of reform proposals to amend it in one way or another. This is why it is important to hear a diversity of viewpoints to ensure our Copyright Act functions as optimally as it can and delivers benefits for all Canadians.

[*English*]

Copyright legislation is a federal responsibility under our Constitution. In recognition that it is both a marketplace framework law and a cultural policy tool, copyright policy responsibility is shared between the ministers of Innovation, Science and Economic Development and Canadian Heritage. Each department has a dedicated team responsible for advising the government on copyright policy. The two departments work together to develop policy options for government's consideration.

[*Translation*]

There are other organizations that play key roles in the overall legislative framework for copyright. The Copyright Board of Canada is an arms-length quasi-judicial tribunal. It establishes royalty tariffs for the use of certain collectively managed copyrighted works, acts as a neutral arbitrator of individual licences upon request of parties, and issues licences for works for which the copyright owner cannot be known or found, which are also known as "orphan works".

There is also the Canadian Intellectual Property Office, which is responsible for registering copyrights, assignments of copyright, and licences. While it is not necessary to register a copyright to obtain legal protection, doing so provides some benefits to the owner in the event of a dispute. It also provides notice to others who may wish to use the work or avoid infringing it.

Canadian courts are another important actor in the legislative framework. They resolve disputes by determining whether infringement has occurred and awarding just remedies to copyright owners when infringement has occurred. Courts can also issue injunctions to prevent or stop infringement. Court decisions play a role in determining how the provisions of the act are interpreted and applied. Canada's Supreme Court has been particularly active on copyright over the past 15 years, releasing numerous important decisions since 2002.

[*English*]

By nature, copyright law is territorial, but it is also governed by an international multilateral system of treaties and agreements that establish minimum standards of protection. This way, authors and creators from one country can easily obtain copyright protection in other countries. This system supports Canadian creators and encourages creative works from other countries to be offered in the Canadian marketplace, providing greater choice for Canadian consumers.

[*Translation*]

The relevant international agreements that Canada is party to include the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights and numerous copyrights treaties administered by the World Intellectual Property Organization, or WIPO, such as the Berne and Rome conventions and the Internet treaties. One of the minimum standards of these agreements is to provide a general term of copyright protection of at least the lifetime of the author plus 50 years.

The last major WIPO copyright treaty that Canada joined was in 2016 when Canada implemented the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. In fact, Canada was the first G-7 country to implement the treaty, and the essential 20th country to join the treaty, the total needed to bring it into force internationally.

[*English*]

Copyright is also frequently part of multilateral and bilateral trade negotiations, including the ongoing NAFTA negotiations. These agreements may commit signing countries to minimum copyright standards. Some of these may go beyond multilateral standards. The Canada-European Union Comprehensive Economic and Trade Agreement was the last agreement with copyright provisions that Canada implemented.

● (0900)

The recently signed comprehensive and progressive agreement for trans-Pacific partnership also contains copyright provisions.

The Chair: That brings us to 10 minutes, but I know you have a little more to go, so I'll let you continue, if you can try to wrap it up.

[*Translation*]

Mr. Mark Schaan: Thank you.

The Copyright Act is perhaps the widest ranging of all our intellectual property laws, impacting most Canadians every day.

But as we look ahead beyond the horizon, users are increasingly able to become creators themselves. New technologies related to the fourth industrial revolution such as artificial intelligence, 3D printing, the Internet of Things, and augmented and virtual reality are also going to interact with copyright. And just as the digital technologies of the 2000s were disruptive to many copyright-based industries, these emerging technologies can also be expected to challenge current legal frameworks and business practices.

[*English*]

If I could just touch on one last thing, it would be that we continue to witness a significant use of copyright in Canada. Some copyright stakeholders have been particularly affected by chronic disruption and are facing market challenges, yet Canadians appear to remain avid consumers of copyrighted content.

A public opinion research survey we recently commissioned found that 80% of Internet users in Canada consumed digital content online over the three-month period ending November 2017. In the same period, Canadians reported spending $5.4 billion on copyrighted content, including digital content, physical purchases, and tickets to live performances and movies. The survey also found that the large majority of digital content consumed was consumed legally. About a quarter of content consumers reported consuming at least one file online illegally, and a small percentage, 5% to be precise, reported consuming content online only from illegal sources. I think this gives us some base for consideration.

[*Translation*]

Madam Chair, I would like to turn it over to my colleague, Ms. Théberge, who will continue the presentation.

Ms. Nathalie Théberge: Thank you very much.

I am happy to be here today to speak to you about the importance of copyright as a policy tool to promote creativity and innovation. In fact, more than ever, copyright and the opportunities for remuneration that it provides creators and creative industries is a central driver of development and prosperity in advanced economies such as Canada's.

Here are a few numbers: the creative sector creates 630,000 jobs in Canada and contributes $54.6 billion per year in economic activity. This includes $7 billion in film and television production; a $561-million sound recording and music publishing industry that provides 11,000 jobs; a $1.15-billion book industry that provides 13,845 jobs; and a video game industry with 472 development studios. Canada is also at the forefront of a rapidly growing virtual and augmented reality sector.

The most recent reform of the Copyright Act dates back to 2012. Parliament passed the Copyright Modernization Act, or CMA, following extensive national consultations. The key objectives of the CMA were to modernize the act in response to changes brought on by the emergence and prevalence of digital technologies; to ensure that the act was forward looking, flexible and adaptable for a constantly evolving technological environment; and to bring it into line with international standards.

To do this, the CMA introduced new rights and protections for creators and rights holders, as well as tools to protect their investments and to support the creation of new online business models. Technological protection measures, or TPMs, are one of the tools that rights holders can use to control or restrict access to their protected works—through passwords, subscriptions, etc.—or to prevent copying, through download or copy blocking, etc.. These measures have positively contributed to online business models for the video game and software industries.

Still in 2012, a number of new provisions were introduced to improve digital access to copyrighted materials, along with clear rules on how to legally use these materials. This included new consumer exceptions, new purposes under fair dealing, notably for education, parody and satire, new and updated exceptions for educational institutions, libraries, museums, and archives, and exceptions to use legitimately acquired materials for the creation of non-commercial, online user-generated content.

The CMA also addressed the liability of new players in the online space, such as Internet Service Providers, or ISPs, digital storage devices, website hosts, or search engines such as Google and Bing, and other digital intermediaries, such as Apple, Amazon, Facebook, and so on. It clarified that these digital intermediaries are not responsible for infringing activity carried out by people using their services or products, as long as they are acting as neutral providers of communication, hosting, caching, and search services or products. At the same time, it offered the ability to take action against those that intentionally enable copyright infringement. One such example is the 2015 injunction obtained by the Motion Picture Association of America against the Canadian programmers of Popcorn Time, a website that allowed for the dissemination of free online content. As part of these changes, ISPs were also mandated to help curb infringement on their networks by participating in a voluntary notice regime.

Since 2015, the Copyright Act has of course continued to evolve in response to regulatory changes and our international obligations.

Mr. Schaan already mentioned two important initiatives: the intellectual property strategy and the reform of the Copyright Board, the impact of which is essential for the economic growth of a number of creative industries, notably the music and education sectors. Budget 2017 also announced a review of the Broadcasting Act and the Telecommunications Act.

● (0905)

In September 2017, the creative Canada policy framework was launched by Minister Mélanie Joly after consulting stakeholders on how to strengthen the creation, discovery and export of Canadian content in a digital world.

Over 30,000 Canadians, including creators and cultural entrepreneurs, took part in the discussion. Creative Canada proposed the government's vision and approach to supporting and growing Canada's creative industries by strengthening existing cultural policy tools, setting a path to renew the ones that require updating, and introducing new initiatives to help creators and creative industries thrive in a global digital marketplace.

[*English*]

The impact of the digital transformation is different from industry to industry. Through the emergence of new distributors, new technologies have not only shifted how money is made but also who benefits and how those benefits flow through to creators and rights holders.

In the music industry, the shift to streaming is a significant change that engages rights in a manner different from when music was consumed via albums or downloading. Relying on complex licensing structures, new services are providing consumers with access to a near infinite catalogue for a set regular fee. Through these services the volume of accessible content has skyrocketed, and increased competition has created a "winner takes all" environment, where although significantly more content is available and consumed, the benefits are concentrated among few. Where value used to be in the creation of an album, it now lies in the individual songs, resulting in an increased focus on acquiring the largest, most valuable catalogue of music. It is interesting to note that from 2010 to 2015, overall revenues from sound recordings in the Canadian music industry remained relatively stable, in large part due to the increase in streaming revenues.

A similar shift toward online streaming, including legal and illegal services, is just one pressure facing the Canadian audiovisual industry. User-generated content has already greatly increased the volume of content that is available to consumers for free.

Of course these issues are not unique to Canada. Digital intermediaries, like on-demand content providers and user-generated content platforms, are increasingly important in the creator-to-consumer value chain for creative content in Canada and abroad. As such, many countries are considering how to address this in terms of liabilities and responsibilities with respect to copyright.

Many are also coming to terms with the fact that copyright legislation is not always the only or the best solution. Issues like the integrity of content metadata, better tracking of copyright activity, simpler licensing practices, and the crucial importance of transparency for all players in the system may indeed not require changes to the legislative framework.

Several stakeholders are already taking advantage of technologies to develop new ways of managing their copyright. Innovations such as application programming interface, blockchain, and smart contracts offer opportunities for more transparency, better rights clearance, and more business potential. Such a technology focus may be the best way to discover common ground among stakeholders.

Going back briefly to the music industry for example, some stakeholders have started using artificial intelligence and cloud-based technologies to capture better data and develop a digital marketplace that improves the ease and accuracy of compensating rights holders. They are also exploring the use of blockchain technologies to streamline licensing and rights management. These are two examples of non-legislative, market- and stakeholder-driven initiatives aimed at simplifying rights management in support of facilitating remuneration.

In short, to fully understand creator remuneration today, one must broaden the scope of investigation and look beyond the law and what the marketplace is doing by itself and consider how to incentivize collaboration among those who benefit and contribute to creator remuneration and nudge innovative thinking.

Before I conclude, I want to reiterate that the work of this committee presents an opportunity to consider the needs and interests of indigenous people, particularly as they relate to traditional knowledge and traditional cultural expressions. Many have argued that the current legal framework is not well suited to addressing some of the key concerns of indigenous communities with respect to the protection of their cultures. Canadian Heritage and its portfolio organizations are active in various processes under way to understand and implement commitments under the United Nations Declaration on the Rights of Indigenous Peoples, which refers specifically to intellectual property.

● (0910)

Canada has also been working actively with international partners under the auspices of the World Intellectual Property Organization, WIPO, to look at the feasibility of developing international norms for the protection of traditional knowledge and traditional cultural expressions. This work is particularly complicated, as the fundamental underpinnings of intellectual property often do not match the particular characteristics of indigenous traditional knowledge and traditional cultural expressions, which are generally intangible and collectively owned.

[*Translation*]

Thank you for your attention. I hope the information we have provided will be useful to you in your study.

Mr. Schaan and I will be happy to answer your questions.

Thank you.

The Chair: I want to thank the witnesses for their presentations.

We will now begin the question and comment period.

Ms. Dzerowicz, you have the floor for seven minutes.

[*English*]

Ms. Julie Dzerowicz (Davenport, Lib.): Thank you so much for the excellent presentation. You've presented a colossal amount of information in a very short period of time, and I could probably spend hours asking you lots of questions right now. That was a really heroic job in a very short period of time.

I'm going to anchor my questions based on what I'm hearing from artists and creators and those in the culture industries from my riding of Davenport. I think it's the best way for me to approach it.

Mr. Schaan, you were talking about remuneration for the youth and the dissemination of artists' and creators' work. You said it's protected for the general life of the author plus 50 years and that for song recordings it's 70 years. The impression I have been given from those in the industry is that Canada is behind other countries. I think that Mexico has a protection for songs for 100 years; most countries have moved to 70, and we're behind at 50 years.

I want to know whether that is factually true, and if so, why it is so.

Mr. Mark Schaan: Thanks so much for the question. I agree that it's a lot to cover in a short period of time.

Canada's term of protection for copyright is based on the type of work, but for most works it generally extends, as you indicated, to 50 years after the death of the creator. The term of protection for sound recordings and performances is slightly different. It's based on the date of fixation of publication and generally lasts for 70 years after this date, so it's 70 years after the song is published. This term was changed from 50 to 70 in 2015.

There is a variety of approaches to copyright term in the international sphere. As you know, in Mexico it is life plus 100, but only for Mexican authors; it's not honoured for authors of other national origin. In the United States it is life plus 70, which is consistent with the term in Europe. There are few studies that indicate one way or the other the economic impact of the life of the creator plus 50 or of life plus 70 years, but internationally, various countries have taken differing approaches to the way they look at term.

● (0915)

Ms. Julie Dzerowicz: From what I'm hearing, in comparison with Europe and the U.S. we are behind, because we're at 50 and they're at 70 at this point in time. This is something that has gone back and forth, so I wanted to confirm it, and I appreciate your doing so.

One other thing that I hear quite a bit is from artists in my riding who ask me why we don't have resale rights in Canada. As an artist, they sell their work; they sell it for what they think it's worth, but then over their lifetime, it increases in value, and they'd like to be able to share in the profits of that increase.

Have we considered this in the past? If so, why have we not implemented it?

Mr. Mark Schaan: Artist resale right is a right for a visual artist. It allows for some form of gain on future sales of a particular work as its value accrues. It's usually done as a portion of the proceeds that comes out of the gallerist or the auction house that does the sale.

As with all things in copyright, it's a challenging issue. There are views on both sides of artist resale rights. We have examined this in the past.

You'll hear from some that being able to benefit from the upward gains of their creative work is critical for people. You'll hear from others that those creative gains are often for superstar artists, of which there are not many, and that the incremental gain for them over the course of their life is not that high, whereas for most artists it's a slow and steady kind of gain and not a one-time windfall.

You'll hear from some that our gallerists already make a significant investment in the promotion and development of their artists and that for the artists to claim back a portion of their proceeds later in life will disincentivize the gallerists from making such investments.

It's a complicated issue, but one we have looked at.

Ms. Julie Dzerowicz: Do other countries offer resale rights? In particular, do the U.S. and Europe offer it?

Ms. Nathalie Théberge: There are about 90 jurisdictions that offer artist resale rights. Germany's an example. Australia is another example.

Mark is correct. One of the challenges we have is actually finding data that would allow us to see the anticipated impact of adding this to the Copyright Act. You will hear both sides of the story, just like Mark said.

Ms. Julie Dzerowicz: What data do you think we're missing in terms of being able to evaluate that?

Ms. Nathalie Théberge: We need to be able to understand the economic impact it would actually have on both the creators and the art market more generally. Some would make the point that it will make it more profitable to actually have art being sold out of the U.S. rather than Canada. There is no data that would demonstrate that because it's about future behaviour. It's about anticipated market behaviour.

One of the things that Canadian Heritage has been doing is trying to get a sense of what the reality is for artists in the visual art market. We were involved in a very interesting project over the last year to be able to aggregate anecdotes as a way to find data, because we don't have any data.

Ms. Julie Dzerowicz: Thank you.

I have a lot more questions on resale, but I'm going to move on to my next question because I have a feeling we will dig into that question on resale over the next little while.

This question is around photocopying. I have a wonderful publishing house in my riding. Textbooks are not printed as much. Books are not printed as much. There's a lot of photocopying that goes on, so there's a very strong belief that writers and authors are not being remunerated for the photocopies that are made.

I know this is a big debate. I'm sure there are some things that have gone to the courts. I just want us to weigh in on where we are in terms of our thinking around remuneration for our authors and writers.

The Chair: You have about 40 seconds.

Ms. Nathalie Théberge: What would be the purpose of the photocopying? Is it for educational purposes? Is it for commercial purposes or non-commercial purposes?

Ms. Julie Dzerowicz: For the most part, they talk a lot about educational purposes, and then it moves on to commercial purposes as well.

Let's start with educational purposes.

The Chair: We're now at 15 seconds, so we don't really have much time. If you wanted to do a segue, there might be an ability to catch it up on other questions. I expect you'll have some other questions on this.

● (0920)

Mr. Mark Schaan: It might come back up again, and I think we can indicate that educational copying is currently one of the most complex and heated issues in copyright. I think our view on remuneration would be, generally, that we would like to see a world in which the public policy objectives of a sustainable publishing industry are there, as well as an efficient mechanism for students to be able to access copyrighted material.

The Chair: Thank you very much.

We will now go to Mr. Van Loan.

Hon. Peter Van Loan (York—Simcoe, CPC): Could you talk to us about how the Copyright Board works and how rights holders interact with it? How often does it get involved in arbitrating issues?

Mr. Mark Schaan: The Copyright Board is embedded in the act and has, arguably, four sets of tariffs that it sets through a tariff-setting process to set a value for copyrighted material.

There are those who are forced by obligation of the law to participate in a tariff-setting process. Those are Re:Sound and SOCAN.

There is an optional regime for other collectives, particularly those collectives that form around the distribution of a wide catalogue of copyrighted material. These are Copibec and Access Copyright in the educational spaces, as well as others.

There's a mechanical right, and then there's the private copying regime, which is for blank CDs.

The Copyright Board has a set of processes that are established in the act that essentially has people set out what they believe to be a tariff. People can then oppose that tariff. Then the Copyright Board goes to consolidate that process and determines whether a hearing is required. Over time, it hears witnesses and ultimately issues a decision.

There has been long-standing consensus among stakeholders and Parliament that the Copyright Board requires priority consideration. As a function of that, the government held technical consultations last August and September, with the intention of implementing reform in a timely manner.

Right now, we're in the midst of finalizing the review of the 60 submissions we received, to look at ways to expedite and create efficiency across the Copyright Board's tariff-setting process, in part because, right now, it can take as much as six to seven years to set a tariff. In the case of rapidly changing technologies.... For instance, the one that always gets raised is the Internet streaming case. It was a very long time, and the tariff started with some players in existence in Canada and ended with some of those players no longer here.

The goal of the Copyright Board reform is really to look at that process and try to ensure we get back to efficiency.

I don't know if you want to add to that.

Ms. Nathalie Théberge: Thank you, Mark.

To build on what Mark just said, it's one of the very few copyright issues where there's almost unanimity. It is a cornerstone of our entire framework. Many of our stakeholders in the creative industries have to go to the board. It takes a long time, and the board is aware of that. We're not sure exactly the type of analysis that is being done to come up with tariffs. The board is aware of that as well.

Retroactive application is always an issue with respect to making sure that our creators and users can operate in an environment where there's minimal legal certainty. The board is aware of that. It's looking at tariffs on technologies that no longer exist. One of the other examples is that it's still looking at ring tones.

Everybody seems to recognize that it's a fundamental piece of the framework and needs to work. It needs to work more quickly and in a more transparent fashion. That's the type of analysis that we're doing right now at the request of the Minister of Industry and the Minister of Canadian Heritage in anticipation of the parliamentary review.

Hon. Peter Van Loan: From the perspective of an ordinary creator, the copyright gives you these rights. How do you go about enforcing them and getting money for them?

Ms. Nathalie Théberge: Well, it depends on which industry you are from. In some industries, including music, for instance, the way they go about enforcing the rights is by organizing themselves through collectives. It's a better and more efficient way for the individual creators to be able to enforce certain rights. SOCAN, for instance, is an organization that collectively manages certain rights associated with the music sector.

Hon. Peter Van Loan: Is everybody in music automatically in a collective whether they choose to do something about it or not?

● (0925)

Ms. Nathalie Théberge: I'll turn to my music industry expert.

Mr. Ian Dahlman (Manager, Creative Marketplace and Innovation , Department of Canadian Heritage): Generally, no. They have to register with the collective to be a part of it.

Hon. Peter Van Loan: If you haven't registered, what do you have to do to exercise your rights?

Mr. Ian Dahlman: I guess it would depend. In some cases, you can enforce your rights directly through the courts. There are certain rights where there are limitations on enforcement, for example, the performance rights for musical works, and usually to enforce those —

Hon. Peter Van Loan: Sorry, the rights for what?

Mr. Ian Dahlman: SOCAN rights. They're the rights for the performance of musical works. In that situation, usually you use SOCAN to enforce rights, at least more effectively. You are not limited, but there are certain structures in the act that make it more efficient to do so.

Hon. Peter Van Loan: If you're not in an industry where the statute puts you into a collective as your only option, if you're not one who normally gets dealt with through a collective, how do you go about enforcing your rights?

Mr. Mark Schaan: The approaches that creators are taking, again, depend enormously on sector and on medium, but there are novel ways that creators are looking to be able to pursue: licensing, smart contracts, agents and other people who act as brokers on behalf of the creator's rights.

In the world of publishing, it's still very much going to find someone who will publish your work and then sell it to someone. You're directly engaged in the process by which you're enforcing your rights because your rights are essentially a transaction between you and the ultimate user. Increasingly, there are novel ways that people are using—digital watermarks and other things—to be able to understand who is using it and then be able to ping people back for the transaction.

Ms. Nathalie Théberge: I think this brings to the forefront the importance of copyright literacy. As you can all appreciate, copyright is complicated. It's complicated for experts. If you're a music producer down in your basement in Timmins and you are trying to enforce your own rights, there is some not only basic, but actually quite extensive, knowledge of copyright that is required for you to be able to do that: where to go, how to enforce your own rights, and how to be able to read the contracts that a music label may be put in front of you for your signature.

In the work that we've been doing over the last few years, the importance of equipping creators with sufficient knowledge of copyright has come up as something particularly important. We often speak about digital literacy. I think digital literacy should also include a component related to copyright.

The Chair: Thank you very much.

[*Translation*]

We will now move on to Mr. Nantel.

Mr. Pierre Nantel: Thank you, Madam Chair.

Thanks to everyone for their presentations.

By way of introduction, let me give you a quick editorial on the review of the Copyright Act by the Standing Committee on Canadian Heritage.

Our basic objective is, as a minimum, to take a favourable approach to copyright. As a result, our job is not to offer a bargain to consumers, but to ensure that Canadian, Quebec and aboriginal cultures continue to flourish.

We must remember that our primary objective is to safeguard copyright. Let me share an anecdote with you. You probably saw the value of the transaction between EMI and Sony—it was reported in the news this morning. This should be mentioned. The composer Pharrell Williams had a huge hit with his song, *Happy*. That song is in the catalogue that Sony just bought from EMI. Copyright and dissemination rights for this song on streaming services have earned Pharrell Williams $200,000. It is a huge international hit and it has earned him 100 times what Elton John earned for his song, *Goodbye Yellow Brick Road*.

What I am getting at is that creators now earn micro-pennies on streaming services. We have a great responsibility as a committee. To be honest, let me say right away that, politically speaking, this issue is like a glass full of gravel, a mouthful of sand. It is very dry and very complex. The public does not understand much about these issues. Moreover, there are not a lot of political gains to be had.

[*English*]

This is the right thing to do.

[*Translation*]

But doing it will be difficult.

In that context, can you illustrate the hot issues you told us about earlier? You said that the only hot issue that everyone agrees on is the Copyright Board of Canada.

I will start there, but, if possible, could you send us, ideally in writing, a list of the hot issues? Personally, I have been interested in this issue for a long time and I am familiar with it. But even I find it a hornet's nest. A series of issues is involved and they seem very theoretical to us. That is why I wanted to tell you the Pharrell Williams story because it gives you an idea of the extent to which things have changed.

Through you, Madam Chair, I would like to ask Ms. Théberge to send us a list of hot issues.

● (0930)

Ms. Nathalie Théberge: Thank you.

It depends on the way in which you define hot issues. The definition will clearly change depending on the point of view of the person involved in them.

When I mentioned the Copyright Board of Canada, I said that it seemed to be one of the rare issues where views seem to converge at a macro level. But the moment we get into detail on the way in which we should make the Board more effective and transparent, opinions diverge. It truly is a lawyers' world, and extremely technical one.

In terms of the effect of the digital world—which is quite a macro-level issue in itself—there is certainly a convergence, but the perception of the digital effect varies. A particularly interesting feature, one that is sometimes a difficult challenge to overcome, is that categories become confused. Previously, copyright was understood in a relatively binary fashion. There were two teams: creators on one side and users/consumers on the other. In the digital world, it no longer works like that, because creators are also users at the same time.

As soon as music creators began to do sampling, they themselves became users, consumers and re-creators of content. Perception of the copyright ecosystem became a much more complex; at that point, and devising simple solutions is hard to contemplate.

To go back to your first question, we could certainly send you a list of issues that we see as figuring most prominently in our consultations. Some are obvious. Can we call them hot issues? That will depend on how you define it.

Mr. Pierre Nantel: I do not know how ambitiously we would jump into that study. But if we asked you to identify 25 issues of your choice, we would choose the priority issue, or you could do it yourselves. But our mandate is to examine the matter from the creative angle in all cases, that is for sure. Creation is not just about someone making pottery on a wheel.

My next question goes to Mr. Schaan.

I was part of the Copyright Act review in 2012, sitting on an ad hoc committee created for the purpose.

I really appreciate the way in which Minister Bains is running his department. I feel the dynamism; I feel that the department wants to work to find solutions to problems at the source. The same goes for technology. We can see it in certain areas, such as the support for technical colleges and electrifying transportation, for example.

So I appreciate your being here. I feel that, for years, the industry department has been missing in action from all the technological challenges that must be faced by the sectors of industry that form part of our Canadian heritage.

Perhaps Canadian Heritage could provide us with this information: from that list, could you help us to determine those issues? Could you point out to us solutions that have been recognized in other countries? After seven years in politics, if I have learned one thing, it is that, when we have to deal with a problem—be it public transit, the environment, or flesh-eating bacteria—we have to try and find out what other countries do when they face similar problems.

We have no monopoly on knowledge; plenty of people are ready to give us solutions.

I want to specifically ask people from the Department of Industry whether, as we look at copyright, we can look at patent protection as well. Is there a link between the two? I feel that, with modern technology, there is indeed a link in terms of intellectual property.

For example, could pharmaceutical companies decide to do less research and development on new products, because copyright and intellectual property rights might be less protected? Is that a parallel we can draw?

● (0935)

[*English*]

The Chair: We are actually out of time, so maybe I could just ask this. He has asked for a list and for international solutions that have been acquired to deal with these hot issues or *les enjeux* on this list. Is that something you would be able to provide to us?

Mr. Mark Schaan: I think the list is no problem. I think the solutions may be more challenging because of the unique nature of the Canadian system.

One has to look at your last point, and I will be very brief. That is to say that one needs to put this in its much broader context: we have a unique country with a unique set of cultural expressions, a unique copyright industry, so the ability to just take some solution that's been created somewhere else and be able to plot it in is difficult. I think the list of issues is probably quite easy. I think in terms of the realm of other things that other people are doing in copyright, we may have to take a another look.

The Chair: Okay, thank you.

[*Translation*]

Mr. Breton, you have the floor.

Mr. Pierre Breton (Shefford, Lib.): Thank you, Madam Chair.

I would like to pursue the matter my colleague Mr. Nantel has just talked about, since we are here, among other reasons, to examine the difficulties and the possibilities that come from the new access points for creative content.

Ms. Théberge, Mr. Schaan, in your opinion, which are the most significant difficulties artists have to face these days? We have asked for a list of issues, but I would like to hear them in your own words. There have to be two or three main difficulties and I feel that we are here today to hear about them. So let's continue this important discussion.

Ms. Nathalie Théberge: I will answer first and then I will hand over to my colleague, Mr. Schaan.

I would say that one of the major challenges is transparency. I have already talked about copyright literacy, the basic knowledge that allows creators and authors to understand what they have to demand when they are signing a contract with a record company, for example. That aspect is absolutely fundamental and goes across all creative sectors.

We could probably make the same observation about consumers and users, that they have to have some knowledge, some angst, and some understanding about the fact that, when they consume a cultural product, they are knocking on the door of copyright. So they have a number of responsibilities in terms of consuming cultural products.

The issue of transparency is also horizontal. The transparency problem is clearly accentuated by the digital world. One of the main challenges, certainly, is the many intermediaries and platforms that take cultural content and launch it back into the sphere of consumption, sometimes transparently, sometimes less so. That is why we must be in a position to have a discussion with those intermediaries and content providers so that creators know, for example, how their content is consumed and monetized, and so that, basically, they are able to make the digital world a tool that works to their advantage more than to their detriment. That is fundamental, especially in music, but also in audiovisual. It is perhaps a little less the case in the world of education.

I would say that those two are particularly critical.

[*English*]

I don't know, Mark, whether you want to add something.

Mr. Mark Schaan: Yes, I would build on that by saying it's really about the fundamental disruption and change in the marketplace that are creating a totally different supply chain than what used to be. If I were a creator in the past, I would show up at my music label and sign a deal. They would own all of the distribution channels. They would own the eyeballs and the ears, and I would have a very linear, straight line.

We're at a time now where there are more channels available to anyone than ever before. There are also more ways of making things than ever before. I can make music in different ways. I can make art in different ways. I can write in different ways. I can access my consumer in totally different ways.

On the one hand, it's a huge opportunity. On the other hand, it's a fundamental shift in the marketplace about what gets valued and how people think about that. Now we're consuming culture and we're consuming copyrighted material at such a rapid pace and in such a different way. When I think of the traditional way I bought my first album, Dire Straits' *Brothers in Arms*, for my father, I'm now in a totally different realm. I'm encountering cultural content daily and I'm thinking about it differently. I think that's the most fundamental issue happening now.

The only thing I'd add is that there are still challenges for the traditional understanding of copyright. If I think about the issues related to the relationship between indigenous peoples in Canada and the intellectual property system, that's not necessarily about the new way of accessing markets. It's really about a fundamental relationship in dealing with concepts of collectively owned, non-tangible goods in a system that says, "Write it down, tell me who owns it, and here is your time-limited prescription of how long you get to protect it." These are more fundamental and have nothing to do with the new realm.

● (0940)

[*Translation*]

Ms. Nathalie Théberge: I just want to add something.

In 2015, the European Commission, the European Union, that is, published a report on compensation for creators. We would be pleased to send you a copy of that report. Of the issues that the researchers identified as fundamental, transparency was number one.

Mr. Pierre Breton: Given that you consider that to be the most significant difficulty, in your opinion, what therefore can we as a government do provide people with more awareness and information? Would that bring more transparence both to artists and consumers, as you have mentioned?

Do you have any suggestions?

Mr. Schaan, I know that you mentioned earlier that solutions are still less clear. However, you have probably given it a lot of thought. Could you perhaps share your knowledge with us?

Ms. Nathalie Théberge: One of the challenges with transparency is that copyright is part and parcel of the contractual relationship between creators and record or production companies, as governed by the Act respecting contracting by public bodies. Confidentiality issues make it hard for legislators to require a certain degree of transparency, though it can be done.

The transparency issue was raised many times during the reform to the Copyright Board of Canada. It's a way of making sure that creators appearing before the board know, at the very least, the basis on which decisions are made. There are probably better practices elsewhere in the world, but, there is a caveat: Solutions that work elsewhere won't necessarily work in Canada.

I think that transparency, especially for digital platform companies, is already at the forefront of Minister Joly's program. You've heard it many times in the Creative Canada program. The notion of accountability for digital platform companies is included as well. These companies clearly understand that there is a copyright dimension to the support they have to provide to creators.

The declaration signed between Canada and the French government in April specifically mentions a shared responsibility between governments, digital platforms and civil society to value copyright and transparency, specifically the transparency of algorithm models.

The Chair: Thank you very much.

[*English*]

We're now starting our five-minute round with Mr. Shields, please.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair.

As was mentioned earlier, it's a very complicated issue. I can remember back to a few universities that I went through, and for every professor you had to buy the newest edition of his book, and you couldn't buy the one from your friend who took the course the previous semester because he had changed three pages in it.

I go now to my grandchildren, who are in university. They never buy a text book. They find everything online. They never buy a textbook anymore because they have sources. My grandchildren never buy any music. Now, my son, on the other hand, has come back and raided my 45s because it was "one and done" in those days: you had one hit song and you were finished. He's now going through my albums because it's the art he's looking for on the album covers. That's what the resale market, I guess, would be. With this younger generation, they go to find anything they can without paying for it. They believe that's their right. When I talk to them, it's very interesting, their mentality, in the sense of searching for what they can find for free. Whether it's a textbook, whether it's music, whether it's a video game, they go searching to find anything for free.

I've been in China a number of times, where you can buy name-brand stuff on the street for one-tenth of what you can here. Copyright in the digital age, you talked about it here as "adaptability built into" . How is that built in to deal with that mentality?

● (0945)

Mr. Mark Schaan: Maybe I'll make the distinction between technological neutrality and being neutral to changing cultural norms. The law is flexible in a sense because the courts have essentially interpreted the continued licensing value regardless of what means it's being sent on. The law in some ways updates itself, in the sense that we went from vinyl to cassette to CD to streaming without a need, necessarily, for a specific change to the law, although we've had continued thoughts about it.

As I indicated in my previous answer, in terms of this changing cultural norm, this notion of what the value of cultural goods is, I think it's very interesting. On the one hand, we're seeing a record-high consumption, so huge amounts of consumption of creative and copyrighted goods, and a changing nature of value. You'd have to go sector by sector. Some sectors have had peaks, and then troughs, and then plateaus, and they've come to a new normal, as it were. Others are still in a massive stage of disruption.

There is one interesting question this committee will have to explore as it continues its work. Is there more that needs to be done or are we at the right state of understanding what value goes into creative industries and the creation of new materials versus what people are willing to pay for them? I think that is a fundamental question of remuneration, which is the work of this committee. Is what's being offered being paid for at a reasonable rate? I do think it's an interesting question/shift, and the data is somewhere in between.

As my remarks indicated, our most recent opinion research shows huge value being placed by lots of consumers, and there is quite a bit of money going through the system, but that's not necessarily consistent all the time with what we're hearing anecdotally. Some people feel like material is available for them regardless of ability to pay, or willingness to pay.

Mr. Martin Shields: That's also in the sense of people trying to get into the game. Whether it's music, whether it's digital games, they will go that route to build the reputation, so they're going also into the dark side, right?

Mr. Mark Schaan: There's certainly a significant use of new tools from creators. Your point is a good one. I think we can look at a number of the most recent Canadian success stories in the performer category of people who got their start using new mechanisms for promotion, including social media and other places. There are whole cultural communities that just live online, both in literature and in art.

Mr. Martin Shields: Yes.

Go ahead.

Ms. Nathalie Théberge: The question the committee may want to ask itself is whether tweaks to the act will change that in a positive or in a negative way. In my opening remarks I did insist on the importance, in our view, of considering remuneration of the creators, which this committee has been tasked to look at, in a much broader context. In just looking at the act itself and what it does, I'm not sure you will get the depth that is required to have a significant positive impact on the broad marketplace. That's the reason why, since 2012, both departments have been looking at non-legislative solutions, engaging with stakeholders to get a sense of what they could do and what we could do. SOCAN is a good example. SOCAN has been doing a lot of very interesting work with respect to blockchain.

That's what we're trying to do.

● (0950)

Mr. Martin Shields: Thank you.

[*Translation*]

The Chair: Mr. Hébert, the floor is yours for five minutes.

Mr. Richard Hébert (Lac-Saint-Jean, Lib.): Thank you, Madam Chair.

We live in a global village, where information is transferred within milliseconds. I'm no expert in computer science, but, like Mr. Shields, I've noticed that the young people I see don't buy music anymore. They get it on the Internet.

Given that the global village is a reality, are there countries, groups, commercial organizations or other entities that are looking into this issue? Would solving this problem once and for all be plausible, or conceivable? I have a hard time seeing how we can prohibit people from gathering information and reproducing it for their own purposes.

You talked about sampling earlier. We can recall the first artists who sampled music. In Quebec, Marc Déry, among others, was very innovative in sampling music in one of his albums.

How can we solve this problem? I know how broad this question is, but do you have any hope at all that we can help artists safeguard their rights?

Ms. Nathalie Théberge: The Copyright Act already provides mechanisms that allow creators who feel aggrieved to assert their copyrights. It also includes a notice and notice regime that allows Internet service providers to notify individuals when they violate the Copyright Act.

Some countries have taken other approaches. In the United States, they have a notice and take down regime; in Europe, they have a three-strikes rule. The legislation already provides various mechanisms that allow creators to assert their rights.

The way creators are paid nowadays, especially in the music industry, is completely different than it was ten years ago. Live performances, concerts and merchandise, such as t-shirts, change, but do not necessarily replace, revenue generated strictly by copyright royalties.

We are still in a period of change, transformation and transition. Stakeholders often have very strong views on whether the digital shift has had a positive or negative impact. Some of them, especially the younger generations, see a great opportunity for marketing in the digital world. Their choice to share their content on digital platforms is less about collecting royalties, and more about having their work discovered in other markets that they couldn't access 15 years ago, because they didn't have the technology. On the other hand, other artists from older generations do not necessarily see the digital world as an essential marketing environment.

There is no ready-made solution. That is why it is beneficial to have two parliamentary committees studying the Copyright Act.

Mr. Mark Schaan: In my opinion, it's not all bad.

[*English*]

There are some bright lights and some interesting things that are happening at the same time. We are absolutely in this phase of significant disruption, but there are some novel, new things happening. We talked about blockchain and some of the data that is now available. One of the collectives that sells neighbouring rights licences to restaurants has done fascinating research that shows that if you slowly turn up the volume over the course of a dinner, people will buy more expensive wine, and if you play faster music, people will chew faster and you can turn over tables more often.

Being able to highlight the value of created content to those who ultimately have to pay for it is one piece that I see shifting.

To Nat's point, I think there are also some new opportunities, for instance seeing a virtual reality performance of Björk at a museum where you can then buy the album and the T-shirt highlights that there are actually new ways in which people are engaging with their creators. That, to me, is hopeful in a time when potentially value is shifting.

● (0955)

The Chair: Mr. Eglinski, please, for five minutes.

Mr. Jim Eglinski (Yellowhead, CPC): You both talked about the responsibilities of your two departments. Are there any enforcement actions that you can take to assist creators out there at the current time? Could you explain to me what you would do if someone has a complaint? How would you handle that?

Mr. Mark Schaan: There are a number of mechanisms that are built in. Intellectual property rights, by their nature, are private rights. They are held by the owner of the right and are litigated on their behalf. But there are a number of mechanisms that we put in place to try to make that as efficient as possible. The biggest one, which we've talked about a little bit already, is the efficiency of the Copyright Board process, which is a huge expediter of individual market transactions in some ways. If you imagine all of the people who come before the Copyright Board, it's a huge catalogue of works with a huge catalogue of users and they essentially match that up in a kind of consolidated process. The efficiency of that process is really crucial. That's why both of our departments are so fundamentally committed to its reform. That was matched in budget 2018 with an additional $5 million to the Copyright Board as a function of making that process more efficient.

When it comes to things like online infringement or physical goods counterfeiting, there are a number of systems that we've also put in place to try to assist creators. Our notice and notice system, which essentially requires Internet service providers to be able to pass along notices from rights holders to informed consumers about their infringement, is a system we put in place to assist creators. Then the Combating Counterfeit Products Act, which is the physical goods version of that, allows copyright holders and trademark holders to register at the border and then have their goods, potentially, searched and held.

There are other pieces we did, such as the enabling provision in 2012, which is a critical assistance to creators to be able to not just go after those who are potentially infringing their content but all those who are enabling that.

I think we've tried a number of mechanisms to try to get at this issue of, recognizing it's a private right, what systems we can put in place for efficiency, the Copyright Board and notice and notice being two good ones.

Ms. Nathalie Théberge: I would like to spend a few seconds on the enabling provision. To my knowledge, and I will look at my colleague, Canada is the only one and the first one that has introduced such a mechanism in its act. The purpose was to target those whose business model is to facilitate copyright infringement. That's a very concrete tool that was introduced in 2012 to support creators in affirming their rights.

Mr. Jim Eglinski: I have a question, and I may come back to you after the session is over. I have an indigenous friend who was the subject of a documentary 30 years ago in which he sang and made comments. He now learns that there's a documentary out there but he never gave permission to use or say what is being said in the documentary. I have looked at documentation that he produced and it is obvious that a sign-off is false. It's not his signature. A school student would be able to tell that the signature is wrong. The producer forged a document giving him the right. Is that a copyright infringement?

The Chair: Let me jump in. If we can speak in general terms without bringing it to a specific case, it might be easier for the departments to speak to.

I don't know whether there's a way to bring generality to that question, and if there isn't, then I'm not sure that you can answer a specific question on the legality of a situation.

Ms. Nathalie Théberge: Okay. I'll try.

The whole issue of traditional knowledge and traditional cultural expression is one of particular interest and challenge, for many reasons that I alluded to in my opening remarks, because some of the fundamental characteristics associated with TK, traditional knowledge, and TCEs do not match with the way intellectual property laws function.

For something to be copyrightable, it needs to be fixed and it needs to relate to one author that you can theoretically identify. In the case of the traditional knowledge or traditional cultural expressions of indigenous people or other types of communities, most often you're dealing with things that are not fixed, such as a song, a story, a know-how. That's the first hurdle.

The second hurdle is that it's usually collectively owned: a song belongs to the Abenaki people, assuming you can identify some sort of property around this song, but it doesn't relate to one individual in the Abenaki community.

From the get-go then you have a major challenge when you're trying to use copyright for that purpose.

That being said, there are other tools in the intellectual property tool kit that are still at the disposal of indigenous people, such as patents and trademarks. Often the example that is put forward is the misappropriation of the inukshuk or of the dream catcher.

The protection of traditional cultural expressions was already highlighted in 1992 by Parliament as one issue that would be worthy of consideration by Parliament. In 2012 the government made a decision to focus its work around making the act technologically neutral and more adaptable to new technologies. It doesn't make the issue around misappropriation and traditional cultural appropriation go away; it's something we still often hear about, including in international negotiations.

Thank you very much.

● (1000)

Mr. Jim Eglinski: Thank you. I think I've run out of time, haven't I?

The Chair: Yes, you have.

[*Translation*]

Ms. Dhillon, you have the floor for five minutes.

[*English*]

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Good morning. My question is for everybody.

What are the biggest challenges artists face in terms of remuneration? What changes would they like to see? What kinds of changes would they like to see to the Copyright Act?

Could you enlighten all of us about that? Thank you.

Ms. Nathalie Théberge: Well, there's a whole list.

Again with all the necessary caveats, you will have creators asking for a longer term of protection, for example. As Mark explained, in Canada it's the life of the author plus 50. In our discussions with creators, you will often hear from certain creators that they want it to be life plus 70. Others will say that's not a good idea.

For each issue that I will bring forward you will have one camp that says it's a good idea and you will have another camp that says it's not a good idea. Term of protection, then, is one.

Artists' resale right we spent a bit of time on earlier. It's something that comes up often when we meet with creators from the visual arts sector. There's a broader issue around exceptions for educational publishing. That's a no-brainer. It includes exceptions in the act, but also the categories for fair dealing. Transparency is one that you will hear about. Efficiency of the Copyright Board is a crucial one, in particular for the music industry.

What else am I missing?

Ms. Lara Taylor (Director, Creative Marketplace and Innovation, Department of Canadian Heritage): I want to touch on one thing. There's a lot of discussion about creators, yet, as you well know, it's a very heterogeneous group, covering a multiplicity of sectors but also a level of sophistication. Creators of large works are from more traditional industries where there are set patterns of copyright and there's more of a sophisticated understanding of copyright itself and where the act they believe should be changed.

We've also been doing quite a bit of work to look at a much different group of creators, potentially your average creator, someone who is creating but may not have a sophisticated understanding of copyright. One of the things we've been trying to do is better understand—and this comes back to copyright literacy—it's equipping creators not only with a basic understanding of copyright so they can better leverage their rights, better monetize their rights, and better protect and negotiate contracts. It's also so they can better speak to policy-makers about what they'd like to see from the copyright and the general arts frameworks. I think there's a whole list of a lot of different issues that more sophisticated rights holders have brought forward. Then I think there's a list that we probably haven't yet heard a lot about from your average creator.

● (1005)

Ms. Anju Dhillon: Can you submit that list to the committee?

The Chair: This is the one that was described earlier.

Ms. Lara Taylor: You'll be getting a list, yes.

Ms. Anju Dhillon: Would you like to add anything, Mr. Schaan?

Mr. Mark Schaan: From our perspective I think my colleagues are bang on in the sense of you'll get a desire for new ways to negotiate with partners. Some people have indicated they'd like a requirement to negotiate with certain other content distributors or others or platforms or others.

Maybe to put it in its broadest context, I think one of the things you'll hear over the course of the study is the constant balancing of public policy priorities. People often think about balance as being between users and rights holders, but the copyright system is serving many people because of the ubiquity of copyrighted content. You'll hear from folks who say these people should pay more, and then you'll hear from those same people that they're an important industry that needs important advantages and needs to be well looked after. You'll get that balance in spades. Each of these creators is asking for the value of their works to be understood. The users of those works are asking for efficiency and transparency and the means by which they have to pay it.

Ms. Anju Dhillon: Have you noticed if any of the stakeholders or those who have a lot to gain—it's usually the middleman who makes most of the money—have been barriers to artists or to the protection of artists' rights?

Mr. Mark Schaan: To Lara's point, I think we can put people into different camps, and it varies enormously by medium because there is a relatively robust infrastructure in Canada to assist creators in being able to understand and work together. Often, that comes with assistance around getting into values so getting to market, getting to a collective, or other things. I think there's another category of folks who have no idea how the copyright system functions. One of the goals of the intellectual property strategy that was a feature of budget 2018 was to increase the overall understanding of intellectual property within the marketplace, recognizing its centrality to the modern economy, and I think that would include copyright.

The Chair: Okay.

[*Translation*]

Mr. Nantel, you have the floor.

Mr. Pierre Nantel: Thank you, Madam Chair.

Thank you again to our witnesses.

If it's true, as my colleague Mr. Shields mentioned, that the legislation cannot change the mentality that copyright isn't important and that everything should be free—a culture that will definitely have to change, if possible—can we also say that the act can, at times, have somewhat of a perverse effect?

When we defined fair dealing for educational use in 2012, certain discrepancies arose that are still noticeable today. Currently, many authors, who are represented by Access Copyright or by Copibec, see their work being used under the pretext of fair dealing for educational use, and aren't paid in consequence. By analogy, let's imagine a similar provision for fair dealing for electricity that would excuse people from paying their electricity bills if the electricity is used for educational purposes!

Can we say that, in 2012, when the Act was reformed, we created a precedent, at a time when our previous collective rights management system was working quite well? Personally, I think that this is the issue that causes the most people to contact us, whether it's copyright holders or people in academia, who come tell us that bachelor degrees are so expensive for our young people. It's true, but these young people aren't paying for their books, even if they do pay for their baked beans and Kraft macaroni and cheese!

Do you have any comments to add?

Ms. Nathalie Théberge: We have also had a lot of people come to discuss this issue with us. Allow me to go back a few years to help out your colleagues.

In 2012, the government added a certain number of categories for fair dealing, including education. It's also worth remembering that the current problems related to copyright certainly stem from the act, but also from the case law. That same year, in 2012, the Supreme Court of Canada provided a rather broad interpretation of the word "education" in the context of fair dealing.

This decision is indeed controversial. On one side of the debate, we have academic institutions, especially in English Canada, that have developed guidelines around copying for educational purposes, which are not only based on the definition of fair dealing provided by the Copyright Act, but also on the case law, specifically the Supreme Court of Canada decision. In Quebec, the situation is a little different, except with regard to the Université Laval.

On the other side, the publishers of educational material, the Access Copyright collective is of the opinion that these guidelines are much too permissive. This issue always finds its way before the courts; just look at the current case between Access Copyright and York University.

So, to confirm what you're saying, it's still a contentious and polarizing issue. One of the questions the committee might want to ask itself is, how can we defuse the situation? How can we get people to the table to find a solution that works for everyone? Université Laval aside, there is precedent in Quebec. Copibec, Access Copyright's sister organization, is pursuing agreements with all of Quebec's universities, and everything is going well. Will it continue that way? It will depend on future decisions. I think that the decision in the York University case is an important one, and it will be interesting to see how things play out since it has been appealed. We'll see what happens, but one thing is certain: This is clearly a recurrent issue.

● (1010)

[*English*]

The Chair: That brings us to the end of our round of questions. I just wanted to do a quick check around to see if anyone had more questions, but we do have some other work to go to on cultural hubs.

[*Translation*]

Mr. Nantel, do you have a question?

Mr. Pierre Nantel: A minor clarification, please: Is stream ripping a real issue? Is there a way to quantify this phenomenon of stealing music from streaming websites that offer this service? This seems to be the reason why we're being asked to enhance the private copying system.

[*English*]

Mr. Mark Schaan: We have no data on how much stream ripping is or is not happening. We do have this public opinion research that we just completed that has some notion of the mechanisms by which people are accessing content both legally and illegally, which gives us some sense. As I indicated in my opening remarks, the illegal usage is, thankfully, quite low, but with every new technological phenomenon, people have found a way to use it both as the law imagined and as the law did not.

The Chair: We're doing two minutes for each side to do it quickly.

[*Translation*]

Thank you for these questions.

[*English*]

Next is Mr. Shields, for two minutes.

Mr. Martin Shields: Thank you.

I'll go to Ms. Taylor.

The co-operatives have existed for some time, and you're talking about literacy. What strategies are you going to change for those co-operatives if you're going to increase the literacy? They've been there before, so what are you going to do? You talked about more literacy with the co-operatives. What strategies are you going to do differently?

Ms. Lara Taylor: Sorry, just to clarify, do you mean artist co-operatives?

Mr. Martin Shields: Yes.

Ms. Lara Taylor: Like collective societies.

We haven't been working specifically with collective societies on literacy. Collective societies tend to represent particular artists or particular rights that artists have. I do think collective societies actually do a great deal to bring literacy copyright information to their members.

We receive calls from the public. Frequently we send artists to their relevant collectives to learn.

Mr. Martin Shields: You said there needs to be more work with literacy with those groups. What are you going to do differently from what you have done in the past? You said you're going to change that.

● (1015)

Ms. Lara Taylor: Sorry. I didn't mean to say I was going to change it. What I can tell you is we haven't been working specifically with collective societies, but we have been looking at working with creative hubs where it's much broader in terms of the kinds of creators that come to creative hubs to learn.

We have recently completed an experiment with Artscape in Toronto where we're looking at how copyright....

There are, for example, online courses for copyright. Creators can go and learn from them. We haven't heard that they have necessarily been very effective because copyright is so complex. It can be so case dependent. With the kind of creation I do, how can copyright better improve my ability to monetize?

The experiment we did was on copyright, if it's embedded in an entrepreneurial skills development course at a creative hub, the different ways it's embedded and how creators can learn from it experientially as opposed to just learning something from a book or a speaker and whether that makes a difference in terms of their ability to then apply copyright.

There's a long way to go in this kind of work, but it's looking at copyright as a practice as opposed to copyright and learning what's in the act.

The Chair: Thank you.

For the final question, we go to Mr. Hogg, for two minutes, please.

Mr. Gordie Hogg (South Surrey—White Rock, Lib.): I've become quite confused, thank you. I thought I was on a committee dealing with copyright. Then I'm told the legislation is not always the only or the best way to deal with things. We're broadening out. Then I see the word "nudge" a little further along, so I'm trying to decide whether this is about the economic modelling and behavioural economics and the notions of nudge coming out of that as you're looking at other marketplaces or ways of doing it.

Am I anywhere near what you're talking about or am I living in a different reality here?

Mr. Mark Schaan: I think you're quite correct. I think the law sits in this complex marketplace now. I think the law has a fundamental role to play in setting the rules of the road. We've seen over time that changes to the law and the evolution of the law have been a force in that marketplace, but what we've tried to articulate today is it's one piece in a much bigger context. I think it does offer up the opportunity to look across the various tools and levers that are available to governments and others to say that we can't fix everything with the law so are there other things.

That's where things like nudge and behavioural economics but also new tools and new opportunities, new mechanisms for people to be able to collaborate and work together can be put into that broader context and picture.

This is a study of the Copyright Act, but I think what we're doing is embedding it in the complex marketplace that copyright currently lives in which includes a whole host of actors, many beyond government.

Mr. Gordie Hogg: In reference to the collaboration when you're talking a little bit about the nudge and behavioural economic model, can you give me some examples of a collaboration that reflects itself in whatever the copyright might be or how it will protect itself in that sense?

Mr. Mark Schaan: I will go back to the Re:Sound example because I think it's an interesting one. The Copyright Act says neighbouring rights exist. They say it's a mandatory licence, and a mandatory licence for everyone who uses recorded music.

When Re:Sound knocks on every restaurant's door in this country and says, "Pay us your $50 for the year," they have a number of ways in which they could do that. The nudge is pay. This $50 gets you a whole host of value. Here are all the interesting things music is doing as it's interacting in your milieu, and here's why it's valuable, and why the $50 is a good deal for you.

I think that's an interesting beginning of a conversation. It's not just, "Hey, I'm your local neighbouring society. You owe me, and the law tells me so." We have a shared interest here. You want to use my music, and I have music for you to use, but it's a valuable commodity, and here's how I can explain how you potentially might be able to use this in new and different ways.

The Chair: Thank you very much.

That brings to an end our round of questions for these witnesses.

It was really interesting to hear all that you had to say and it's a great beginning to this study.

We are going to be moving in camera, so we are going to have to clear the room.

Thank you.

[*Proceedings continue in camera*]

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